LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 16 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 614

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, INTERNATIONAL,

Petitioner,

vs.

NATIONAL MEDIATION BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

BRIEF OF THE RESPONDENT AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, IN OPPOSITION.

HAROLD A. KATZ,
IRVING M. FRIEDMAN,
Attorneys for Respondent Air Line Pilots Association, International.

Of Counsel:
KATZ & FRIEDMAN,
7 South Dearborn Street,
Chicago 3, Illinois.

STEPHEN I. SCHLOSSBERG,
1730 K Street, N. W.,
Washington 6, D. C.

INDEX

	PAGE
Opinion Below, Jurisdiction, Constitutional and Statutory Provisions Involved	1
Questions Presented	1
Statement	2
Argument	6
Conclusion	10

CITATIONS.

Cases.

Fay v. Douds, 172 F. 2d 720 (C. A. 2, 1949)	7
Federal Communications Commission v. WJR, 337 U. S. 265 (1948)	7
General Committee v. MKT, 320 U. S. 323, 336 (1943)	8
Leedom v. Kyne, 358 U. S. 184 (1958)	8, 9
Switchmen's Union v. National Mediation Board, 320 U. S. 297 (1943)	6, 8
UNA Chapter, Flight Engineers' Intern. Ass'n, AFL-CIO v. National Mediation Board, 82 S. Ct. 394 (1962)	7, 8
WES Chapter, Flight Engineers' Intern. Ass'n, AFL-CIO v. National Mediation Board, 82 S. Ct. 395 (1962)	7, 8

Statute.

Railway Labor Act, 44 Stat. 577, as amended, 45 U. S. C. § 151 et seq.:	
Section 1, Fifth	6
Section 2, Fourth	8
Section 2, Ninth	7, 9
Section 201	6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 614.

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, INTERNATIONAL,

Petitioner

vs.

NATIONAL MEDIATION BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

BRIEF OF THE RESPONDENT AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, IN OPPOSITION.

OPINION BELOW, JURISDICTION, CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The petition adequately covers the Opinion Below, Jurisdiction, and the Constitutional and Statutory Provisions Involved.

QUESTIONS PRESENTED.

1. Whether a District Court has jurisdiction of an action to review a certification by the National Meditation Board for the craft or class of stewardesses under the Rail

way Labor Act, where the union which is duly selected by the stewardesses in a secret ballot election includes within its membership other crew members, some of whom are pilots who during flight exercise command functions over other members of the crew including stewardesses.

2. Whether the refusal of the National Mediation Board to hold a formal hearing on the above question constitutes a violation of due process of law and vests a District Court with jurisdiction to set aside a certificate of the Board.

STATEMENT.

The Air Line Stewards and Stewardesses Association (ALSSA), petitioner herein, was established and organized by respondent Air Line Pilots Association (ALPA) in 1947, and from 1947 to 1960 was its chartered subsidiary affiliate (R. 290, 270-272). As far as the record reveals, the petitioner never considered that its affiliation with ALPA (indeed, its alleged "domination" by ALPA, Pet. 17) constituted an impediment to its representation of the class of stewards and stewardesses under the Railway Labor Act during the years from 1947 to 1960 (R. 290-291). The petitioner's claim that ALPA is not qualified to represent stewards and stewardesses appears to date from August of 1960, when a schism occurred in which certain ALSSA officials removed the union's possessions from its office in the ALPA building as part of an attempt to disaffiliate that organization from ALPA (R. 296-297). ALPA removed the then officers of ALSSA on charges of alleged misconduct and appointed replacements. Legal action was instituted in the Circuit Court of Cook County between the two groups to determine the question as to which are the legally constituted officers of ALSSA (R. 292-295, 245-267). To resolve the resulting representation dispute, ALPA requested the National Mediation

Board to investigate under Section 2, Ninth of the Railway Labor Act (45 U. S. C. § 152, Ninth) and to conduct an election to determine if the stewards or stewardesses of United and Braniff, respectively, preferred to remain a part of the Air Line Pilots Association, as they had been since their initial organization in 1947, or to be represented by the petitioners, who now claimed to be the Air Line Stewards or Stewardesses Association after their efforts to disaffiliate from the parent ALPA (R. 13, 311, 14, 315-316). The action before the Mediation Board was in addition to the extensive civil litigation undertaken in the State Courts of Illinois (R. 245-302, 242-243).

The National Mediation Board invited the petitioner (one of the two factions claiming to be the true ALSSA) to submit a statement with respect to the application of ALPA for an investigation of the United and Braniff representation disputes, and on January 30, 1961, the petitioner submitted lengthy statements in which it sought to persuade the Board that ALPA should not be permitted to appear on an election ballot because of the alleged "supervisory character" (R. 86, 92) of pilots with respect to stewardesses (R. 85-96), and it requested a "formal hearing" (R. 90, 96). The full membership of the National Mediation Board considered the matter on February 7, 1961, and two days later the Executive Secretary of the Board, in advising ALSSA that an election would be conducted among the employees involved in the dispute (R. 97-100), stated:

> "It will be noted there is no restriction contained in the language of the Act on who may be certified as the representative of the employees of a carrier subject to the Act. However, the Board for many years has had a policy of not certifying a carrier or an officer of a carrier as an employee representative for the purposes of the Act. The Board is of the opinion that the Air Line Pilots Association is not barred, under such policy, from making application for investi-

gation of a representation dispute involving the employees in question. The Board must, therefore, decline your request for a formal hearing on this subject" (R. 97-100).

The petitioner on February 20, 1961, filed an action in the United States District Court for the District of Columbia to enjoin "the National Mediation Board from conducting elections, counting ballots, and certifying representatives at Braniff and United with the Air Line Pilots Association on the ballot" (R. 10). United filed an affidavit in opposition to ALSSA's motion for a temporary restraining order and preliminary injunction, in which it urged that, "The only reasonable way to resolve this dispute and to restore to these employees their rights guaranteed by the Railway Labor Act is to proceed with a secret ballot among these employees" (R. 309).

After the District Court declined to enjoin the Board from conducting an election, an overwhelming majority of employees in each case selected ALPA by secret ballot: United's stewardesses favored ALPA by a vote of 891 to 178; Braniff's stewardesses voted 214 for ALPA, 8 for ALSSA (R. 351). The results of the balloting strongly suggest that the petitioner's concern was not over narrow technical questions of law as to ALPA's right to participate, but rather to prevent the employees from exercising their statutory right to select their own bargaining agent.

The District Court on May 5, 1961, found that it was without jurisdiction over the subject matter and allowed the motion for summary judgment of defendant National Mediation Board and the motions to dismiss of defendant Air Line Pilots Association, International, and United Air Lines (R. 352-353). This decision was affirmed by the Court of Appeals in a *per curiam* opinion on July 13, 1961, in which the Court declared that the Railway Labor Act

does not either "expressly or by implication" make a union which also represents pilots ineligible to represent stewardesses even if the pilots perform some supervisory and managerial functions in regard to the stewardesses (Pet. 5a). Concerning the claim of coercion, the Court held that it did not create jurisdiction in the District Court to set aside the Board's determination (Pet. 6a). The Court of Appeals further ruled that no constitutional question was presented (Pet. 5a).

ARGUMENT.

I.

The first basis on which petitioner seeks to have a writ issued is that it was denied due process of law by the failure of the National Mediation Board to grant a hearing as requested. Petitioner argues that this Court never intended *Switchmen's Union* as a ruling that the Mediation Board "might make adjudications of disputed factual issues without holding a hearing" (Pet. 11). Petitioner's statement of the problem indicates several basic misconceptions. Both the language used in the Opinion and the context in which it appears belies any notion that this Court when it decided *Switchmen's Union* was not fully aware that the Mediation board could exercise its powers in Section 2, Ninth, of the Railway Labor Act without a hearing. "While the Mediation Board is given specified powers in the conduct of elections, there is no requirement as to hearings," the Court said. *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297, 304 (1943). Moreover, the petitioner was permitted to present its position to the Board by written statement. Its basic argument was that members of ALPA supervised stewardesses during flight. A hearing, however, was not appropriate because, first, the Act defines "employee" as including not only employees but "subordinate officials", which includes supervisory personnel (Section 1, Fifth, § 201; 45 U. S. C. §§ 151, Fifth, 181) and, second, "there is no restriction contained in the language of the Act on who may be certified as the representative of the employees of a carrier subject to the Act" (R. 97, 99; Pet. 5a). The contention of the petitioner that ALPA be denied a place on the ballot was thus clearly

contrary to the provisions of the Act. The Board's declining to hold a hearing in such a circumstance is no more a denial of due process than is the dismissal of a complaint by a court on the ground it fails to state a cause of action or the allowance of a motion for summary judgment. Cf. *Fay* v. *Douds*, 172 F. 2d 720, 725 (C. A. 2, 1949); *Federal Communications Commission* v. *WJR*, 337 U. S. 265, 274-284 (1948).

This Court recently declined to review a case in which ALPA was certified to represent a craft or class which included pilots, co-pilots, and flight engineers. The command functions of pilots during flight are as applicable with respect to these crew members as to stewards and stewardesses. Obviously if such crew members are properly within the same craft or class and are represented by the same union, there is no basis for questioning the standing of the same union to represent the crew members in the instant case. *UAL Chapter, Flight Engineers' Intern. Ass'n, AFL-CIO* v. *National Mediation Board*, cert. den., 82 S. Ct. 394 (1962); *WAL's Chapter, Flight Engineers' Intern. Ass'n, AFL-CIO* v. *National Mediation Board*, cert. den., 82 S. Ct. 395 (1962). Finally, the fact that Section 2, Ninth of the Act requires a hearing when there is a disposition of a representation dispute by "three neutral persons," while the Act does not require a hearing where the determination is made by the Mediation Board itself, makes it clear that the failure to provide for a hearing before the Board itself was a deliberate choice made by the Congress in recognition of the expertise of the Board in carrying out its functions under the Railway Labor Act.

The arguments of the petitioner, addressed to a Board which is fully conversant with basic relationships in the airline industry, fell of their own accord. Petitioner was seeking to delay the proceedings in the hope its chances for success in the election would improve with the passage

of time. The purpose of the Railway Labor Act would be frustrated if petitioner could have succeeded in such a maneuver. Unwanted as the bargaining agent by the very employees it sought to represent, the petitioner's only hope lay in depriving the employees of an opportunity to express their choice. The choice of who may represent the employees is not for the petitioner or for the Courts. "The majority of any craft or class shall have the right to determine who shall be the representative of the craft or class for the purpose of this Act" (Section 2, Fourth, 45 U. S. C. § 152, Fourth). All that the National Mediation Board did was to give them this choice.

II.

Petitioner's argument that *Switchmen's Union* does not preclude court review of a dispute under Section 2, Ninth, is contrary to the clear language in the opinion in that case. This Court made it clear beyond any doubt that "the dispute was to reach its last terminal point when the administrative finding was made." *Switchmen's Union v. National Mediation Board*, 320 U. S. 297, 305 (1943). In such a case, "the administrative remedy is exclusive". *General Committee v. MKT*, 320 U. S. 323, 336 (1943). This Court has recently rejected arguments virtually identical to the petitioner's. *UNA Chapter; Flight Engineers' Intern. Ass'n, AFL-CIO v. National Mediation Board*, cert. den., 82 S. Ct. 394 (1962); *WES Chapter, Flight Engineers' Intern. Ass'n, AFL-CIO v. National Mediation Board*, cert. den., 82 S. Ct. 395 (1962).

The frail reed on which the petitioner would have this Court depart from the salutary rule that there "be no dragging out of the controversy into other tribunals of law" (*Switchmen's Union v. National Mediation Board*, 320 U. S. 297, 305) is a presumed reliance on *Leedom v.*

Kyne, 358 U. S. 184 (1958), where the failure of the National Labor Relations Board to follow an express statutory command was held to vest original jurisdiction in the District Court. But there is no analogy because the petitioner can find no statutory command that was violated by the National Mediation Board. Thus, *Leedom v. Kyne*, is completely inapplicable. The petitioner points to the "direction to the Mediation Board in Section 2, Ninth of the Railway Labor Act, that it 'shall insure the choice of representatives by the employees without interference, influence or coercion'." (Pet. 14). However, closer examination reveals that the quotation is from that part of Section 2, Ninth, authorizing the Mediation Board "to take a secret ballot of the employees involved." It can be readily seen that Petitioner's true complaint against the Board was not that it violated this statutory command or direction, but rather that the Board followed the statutory directive, *i. e.*, it took a secret ballot of the employees involved to ascertain their authorized representative in such manner as to insure their choice of a representative without carrier interference, influence or coercion.

CONCLUSION

For the reasons hereinabove set forth, respondent Air Line Pilots Association, International respectfully prays that the petition for a writ of certiorari be denied.

Respectfully submitted,

HAROLD A. KATZ,
IRVING M. FRIEDMAN,
Attorneys for Respondent Air Line Pilots Association, International.

Of Counsel:

KATZ & FRIEDMAN,
7 South Dearborn Street,
Chicago 3, Illinois.

STEPHEN L. SCHLOSSBERG,
1730 K Street, N. W.,
Washington 6, D. C.